

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2538

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-2538

HYMAN RADZANOWER,

Plaintiff-Appellant,

-against-

FIRST NATIONAL BANK OF BOSTON,

Defendant-Appellee,

-against-

TOUCHE, ROSS & CO., TELEPROMPTER CORPORATION,
JACK K. COOKE, RAYMOND P. SHAFER, W.J. BRESNAN,
H.J. SCHAFLY, LEONARD TOW, R.C. TODD, JR.,
B.P. SIMON, J.B. GREEN, L.H. READ, R.C. WILSON,
H.E. FLAHERTY, B.D. FISCHMAN, BERLE ADAMS,
MARVIN CARTON, R.F. LEWIS, P.L. LOWE, CHARLES
LUCKMAN, M.B. MITCHELL, A.E. PUCKETT, J.H.
RICHARDSON, M.E. LIVINGTON and JACK WRATHER,

Defendants.

Appeal from Order of the United States District
Court for the Southern District of New York

SUPPLEMENT TO JOINT APPENDIX

DEBEVOISE, PLIMPTON, LYONS &
GATES
Attorneys for Defendant-Appellee
First National Bank of Boston
299 Park Avenue
New York, New York 10017
(212) 752-6400

IRA J. SANDS
Co-Counsel for Plaintiff-
Appellant
701 Seventh Avenue
New York, New York 10036
(212) 265-3500

AND

SAMUEL GOTTLIEB
GAINSBURG, GOTTLIEB, LEVITAN
& COLE
Co-Counsel for Plaintiff-
Appellant
122 East 42nd Street
New York, New York 10017
(212) 697-3440

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Amended Endorsement and Final Judgment as to Defendant First National Bank of Boston.....	A-60
Stipulation.....	A-63

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED

MAR 6, 1975

S.D. OF N.Y.

-----*

HYMAN RADZANOWER,

: - 74 Civ. 3025 (LFM)

Plaintiff,

:

-against-

:

TOUCHE, ROSS & CO., et al.,

:

Defendants.

:

AMENDED ENDORSEMENT
AND FINAL JUDGMENT
IS TO DEFENDANT FIRST
NATIONAL BANK OF
BOSTON

-----*

MacMahon, D. J.:

The within motion, pursuant to Rules 12(b) (2) and (3), Fed. R.Civ.P., for an order dismissing this action as to defendant First National Bank of Boston on the ground of improper venue, is granted.

Absent waiver or consent, a national bank may be sued only in the district in which it is established. 12 U.S.C. Section 94; Cope v. Anderson, 331 U.S. 461, 467 (1947); Klein v. Bower, 421 F.2d 338, 342 (2d Cir. 1970); Bruns, Nordeman & Co. v. American Nat'l Bank & Trust Co., 394 F. 2d 390 (2d Cir.), cert. denied, 393 U.S. 855 (1968); Buffum v. Chase Nat. Bank of City of N.Y., 192 F. 2d 58 (7th Cir. 1951), cert. denied, 342 U.S. 944 (1952). Movant is established in Boston, Massachusetts, within the meaning of 12 U.S.C. Section 94, because its charter specifies

Boston as its principal place of business. Buffum v. Chase Nat. Bank of City of N.Y., supra, 192 F.2d at 60; Leonardi v. Chase Nat. Bank of City of N.Y., 81 F. 2d 19, 22 (2d Cir.), cert. denied, 298 U.S. 677 (1936); Southeast Guaranty Trust Co. v. Rodman & Renshaw, Inc., 358 F. Supp. 1001, 1004 (N.D. Ill. 1973); General Electric Credit Corp. v. James Talcott, Inc., 271 F. Supp. 699 (S.D.N.Y. 1966).

Movant's designation of the New York Superintendent of Banks to receive process on its behalf is not a waiver of this venue provision. Although the language of the designation is broad, it specifically evidences an intent to comply with Section 131(c) of the New York Banking Law, which requires such a designation before a foreign bank can operate in a fiduciary capacity in New York. This designation operates as a waiver of the venue provision only in actions involving movant's fiduciary acts in New York, and no such acts are alleged or involved here.

Accordingly, First National Bank of Boston's motion to dismiss this action on the ground of improper venue is granted in all respects and the Court expressly de-

termines that there is no just reason for delay in the entry of final judgment on this order and hereby directs the entry of such final judgment, and it is further

ORDERED, ADJUDGED AND DECREED that the complaint be and the same hereby is dismissed as to defendant First National Bank of Boston.

Dated: New York, N.Y.
February 28, 1975

Lloyd F. MacMahon
U.S.D.J.

Judgment entered-3-6-75

Raymond F. Burghardt
Clerk

~~February~~ 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

HYMAN RADZANOWER,

74 Civ.3025 (LFM)

Plaintiff,

-against-

STIPULATION

TOUCHE, ROSS & CO.,
et al.,

Defendants.

US. DISTRICT COURT
FILED
MAR. 6, 1975
S.D. OF N.Y.

----- x

IT IS HEREBY STIPULATED AND AGREED by and between
the undersigned counsel for plaintiff, HYMAN RADZANOWER,
and counsel for defendant, FIRST NATIONAL BANK OF BOSTON:

1. That the parties hereto consent that the endorsement herein of HON. LLOYD F. MacMAHON dated October 21, 1974 dismissing the complaint as to defendant, FIRST NATIONAL BANK OF BOSTON, on the ground of improper venue be amended, in the form annexed hereto, to contain a certificate as required under Rule 54(b) and the judgment entered pursuant thereto; and

2. That plaintiff's Notice of Appeal is deemed to be amended so as to include and be an appeal from the amended endorsement and final judgment as herein entered as if the same were originally set forth in such Notice of Appeal; and



3. That the amended endorsement and final judgment as entered herein and this Stipulation shall be incorporated into and be deemed part of the Joint Appendix filed by the parties on the appeal now pending before the United States Court of Appeals for the Second Circuit, No. 74-2538, with the same effect as if originally set forth therein.

Dated: New York, N. Y.

February 10th, 1975

GAINSBURG, GOTTLIB, LEVITAN & COLE

By 

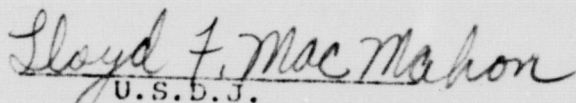
A Member of the Firm,
Co-counsel for plaintiff
HYMAN RADZANOWER

DEBEVOISE, PLIMPTON, LYONS & GATES

By 

A Member of the Firm,
Attorneys for defendant
FIRST NATIONAL BANK OF BOSTON

So Ordered: FEBRUARY 25, 1975


U.S.D.J.



COPY RECEIVED
DEBEVOISE, PLIMPTON, LYONS & GATES
By J. M. Schuman
Date: 3-25-75